

Categorical Exclusions Exercise 1

CATHY: Richard, why don't you start by defining categorical exclusions for us?

RICHARD: Okay. Categorical exclusions, categories of actions that have been determined to not have a significant effect on the environment, and therefore do not need to be analyzed through an EA or an EIS.

CXs cover a wide range of actions, from things like payroll actions to all the way up to harvesting of trees. CXs don't require NEPA analysis. They are essentially excluded from NEPA analysis, but they are not excluded from NEPA as a whole. CXs are a way of complying with NEPA. There are other parts of the NEPA process, other than analysis, that you still may want to consider when doing a CX, such as public involvement.

Using a CX doesn't mean that you don't have to comply with other laws, such as the Endangered Species Act. The CX is a tool to streamline the NEPA process. It helps us save time and save money, make the whole process more efficient. So if you've got one available, use it.

CATHY: So there are some special categorical exclusions relating to the Healthy Forest Initiative and to the Energy Policy Act. We'll discuss those later in the course, but for now Meagan is going to tell you about the more frequently used categorical exclusions.

MEAGAN: Sure, Cathy. I would like to start with where you can actually find the categorical exclusions. There are two separate lists that you can work from. The first is a list for the Department of the Interior or DOI. This list of CXs may be found at 43 CFR Part 46. The BLM also has its own list, and this is found in 516 Departmental Manual, Chapter 11. These are also included in Appendix 3 and 4 of your NEPA Handbook for convenience.

There are some differences between these two lists, and I find it helpful to think about the Department of the Interior's list as broad administrative categorical exclusions. This is where you find the CXs for things like payroll actions, et cetera.

The Bureau's list is a lot more specific. There are more categorical exclusions, and these are geared towards specific resource management actions. There are about 13 departmental CXs and about 80 BLM categorical exclusions. Another thing to note is that the BLM list is broken out by subject heading, such as wildlife or realty. These titles are only for organizational purposes, and shouldn't limit your ability to apply a CX to a given action.

Other departments and agencies have their own categorical exclusions, however, BLM actions can only be covered by the DOI or BLM lists. For example, the Forest Service may have a categorical exclusion for an action that you are considering, however, if it doesn't appear on the BLM or DOI list, you cannot use this CX to cover your action and would have to look at other ways to achieve NEPA compliance.

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It's also important to note that if an action is not on one of these lists, it doesn't matter how little environmental impact it may have. It cannot be categorically excluded. It's important to work closely with your NEPA specialist or planner on the list of categorical exclusions. The DOI and BLM lists do change from time to time and new guidance may be offered as time progresses. Sometimes new categorical exclusions are added, and it's possible that some may be removed.

JOLIE: Once you have determined that a CX applies, you need to consider if there are any extraordinary circumstances. Extraordinary circumstances are a list of circumstances that would preclude the use of a departmental or BLM CX. You can find the list of extraordinary circumstances in Appendix 5 of the NEPA Handbook, and it's also included in the DOI NEPA regulations. All departmental and BLM CX actions must be subjected to extraordinary circumstances review to see if any apply. Even triggering just one of these circumstances would preclude you from being able to use a CX. For example, if your action would violate a law for the protection of the environment, then the action cannot be categorically excluded. If you are uncertain as to whether or not one of the extraordinary circumstances apply, we recommend preparing an EA to determine if there's significant impacts.

MEAGAN: Now that you know some of the basics, here are a few things to think about when going through the CX process. Recall that you need to determine if your proposed action appears on either the DOI or BLM list of actions that can be categorically excluded.

In doing so, you must look at your whole action. Ask yourself what you need to achieve. If you must segment or break down this action into multiple components in order for it to fit a categorical exclusion, it's not eligible for a categorical exclusion. Segmenting would be a violation of NEPA.

Consider the total area that you are looking to treat, and consider whether or not you may be treating overlapping acreages in terms of doing your assessment. That way you make sure you are accounting for everything that you may be impacting. There's some good examples on working through this process in the NEPA Handbook.

CATHY: Now it's time for your first exercise. You are going to review several actions and decide if they can be categorically excluded. So get out your participant guide. Open it to Exercise 1 and get out your BLM NEPA Handbook and open it up to Appendix 3 and 4.

So what you are going to do is read the action and determine if it's one of the BLM or DOI categorically excluded actions. Now, be sure to indicate which CX it is.

Okay. It's time to do the exercise. So pause the video. Complete the exercise, and then you will hit play to check your answer with ours.

RICHARD: Now, let's compare your answers for the exercise with what we concluded. Number one, stream temperature monitoring. That would be DOI CX 1.6, nondestructive data collection.

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Number two, removal of hazard trees in a campground. BLM CX c.2, removal of individual trees.

Number three, approval of a cash award for an employee. DOI CX 1.3, routine financial transactions.

Number four, approval of a grazing permit for a new permittee. There's no CX for this action.

Number five, granting a right-of-way for overhead power lines across multiple sections of BLM land.

There's no CX for this action. There is a similar CX, c.14, but that's for a much more limited scope.

Number six, sale of firewood permits. BLM CX c.5, as long as it's for personal use, not commercial use.

Number seven, approving a permit for a day-long endurance horse race. BLM CX h.1, issuance of a special recreation permit.

Number eight, approving a one eighth mile right-of-way for Mr. Smith to access his private end holding. BLM CX e.17, grant of a short right-of-way.